GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Public Servants – Registration & Stamps Department – Sri K.Bodenna, former Joint Sub Registrar-II, Registrar Office (Original Branch), Visakhapatnam (now Retired) – Internal Audit Report on the Registrar Office (Original Branch), Visakhapatnam alleging deficit stamp duty and Registration fee on the Doc.No.2026/2007 – Disciplinary Proceedings initiated – Regular enquiry conducted – Inquiry Report communicated – Show cause notice issued - Representation submitted – Imposing a penalty of 15% cut in pension permanently besides recovery of loss of Rs.16,63,685/- - Orders – Issued.

REVENUE (VIGILANCE-II) DEPARTMENT

G.O.Rt.No.663 **Dated:10-07-2017**

Read the following:

Ref: 1.DIG, R&S, Vizianagaram Procs.No.E1/308/2012,dt:2-4-2012.
2.DIG, R&S, Vizianagaram Procs.No.E1/308/2012-1, dt:19-1-2013.
3.DR, R&S, Vizianagaram Lr.No.E1/105/2013, dt:30-3-2015 along with enquiry report.
4.DIG, R&S, Vizianagaram Lr.No.E1/308/2012, dt:22-03-2016.
5.Govt., Memo.No.121113/Vig.II(1)/2016-2, dt:26-5-2016.
6.DIG, R&S, Visakhapatnam Lr.No.E1/379/2012, dt:4-2-2017.
7.Govt., Memo.No.121113/Vig.II(1)/2016-7, dt:2-3-2017.
8. Representation of the CO Sri K.Bodenna, former SR (Retd) dt:1-4-2017.
9.Govt., Memo.No.121113/Vig.II(1)/2016-8, dt:15-5-2017.
10.APPSC Lr.No.458/DC&C/1/2017, dt:7-6-2017.

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O R D E R:

Where as in the reference 1st read above, it has been brought to the notice of the Government that the Deputy Inspector General, Registration & Stamps, Vizianagaram has initiated disciplinary proceedings against Sri K.Bodenna, former Sub Registrar (Retired) duly framing the following charge.

> "That you Sri K.Bodenna, Sub Registrar, Bobbili while working as Joint Sub Registrar-II at Registrar Office (Original Branch), Visakhapatnam registered a deed of sale agreement bearing Doc.No.2026/2007 of Registrar Office, Visakhapatnam has failed to scrutinize the Document properly and caused huge loss of Revenue to an extent of Rs.16,63,685/- to the State exchequer".

2. The Charged Officer has submitted Written Statement of Defence. Having not convinced with the Written Statement of Defence submitted by the Charged Officer, the Deputy Inspector General, Registration & Stamps, Vizianagaram has appointed District Registrar, Registration & Stamps, Vizianagaram as Inquiring Authority in the reference 2nd read above.

3. Whereas in the reference 3rd read above, the Inquiring Authority i.e., the District Registrar, Registration & Stamps, Vizianagaram has submitted the enquiry report stating mainly among others that there is no mention in the Agreement that the vendor (Sri Dutt) would execute any other document (such as a sale deed) at a later date to effect transfer of the property by another registered documents and stated as such the present Agreement itself as serving the purpose of "conveyance of schedule property" in favour of the purchaser for a consideration of Rs.1,75,00,000/- and hence the document should be classified as a "Conveyance on Sale" of immovable property of above undivided share. The Disciplinary Authority has further stated that as he registry treated the document of "conveyance

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on sale" as an Agreement of sale falling under Article 6 (B) ibid attracting a maximum stamp duty of Rs.20,000/- and Registration fee of Rs.1,000/- there is short levy of duties amount to Rs.16,63,685/-. The Disciplinary Authority has further stated that the Commissioner & Inspector General, Registration & Stamps accepted in his explanatory note for the factual note vide D.O.Lr.No.SRA/DP.Cell/Regn/PDP46/2009-10/461, Dated:1-2010 made by the Accountant General, Andhra Pradesh, Hyderabad vide Lr.No.LAR-1/1066/2010, Dated:7-9-2010 and directed the District Registrar, Visakhapatnam in Memo.No.LAR-1/1066/2010, Dated:23-11-2011 to collect the deficit amount under section 41-A of the Indian Stamp Act, 1899.

4. The Inquiring Authority has further stated that the Charged Officer in his defence statement has stated mainly among others that the vendor of the disputed document No.2026/2007 Sri Ch.Aswini Dutt had no authority to sell / transfer / convey or alienate atleast an "inch" of the scheduled property referred to in the document No.218/2004 and stated that the disputed document No.2026/2007 was not about "conveyance / transfer" of the alleged schedule property of 1012 Sq.yds but was purely a sale / transfer of 1,25,000/- equity shares along with the share certificate held by him in M/s Dasapalla Estates Private Limited company and the learned Accounts Officer, Accountant General, Andhra Pradesh, Hyderabad miserably failed to read, understand and appreciate the content and intent of the disputed document and misclassified it as "Conveyance on Sale". The Charged Officer has further stated that the transaction in the disputed document No.2026/2007 should and must logically fall under Article 62 (a) of Schedule I for chargeability to stamp duty @ 25 paise for every hundred Rupees on 1,75,00,000/- being the alleged consideration for sale / transfer of the 1,25,000/- equity shares @ Rs.140/- per share and the stamp duty there on works out to Rs.43,750/- only and the Registration fee works out to Rs.87,500/-. With the above, the Charged Officer has stated that there is no deficit stamp duty and Registration fee of Rs.16,63,685/- and also stated that the same can be realised under various provisions of the Indian Stamp Act and thereby requested to drop the charges against him.

5. The Inquiring Authority after examining the case of the Disciplinary Authority / case of the defendant has stated that the classification of the document under enquiry has not been properly scrutinised by the Charged Officer, whether, it may be chargeable to duty under Article 62 (a) of Schedule I and Article 6 (B) of Schedule 1-A as stated by the Charged Officer or under Article 47-A of Schedule I-A as remarked by the Accountant General, Andhra Pradesh, Hyderabad. The Inquiring Authority has further stated that the Commissioner & Inspector General, Registration & Stamps, Andhra Pradesh, Hyderabad / CCRA confirmed and accepted in his explanatory note for the factual note vide D.O.Lr.No.SRA/DP.Cell/Regn./PDP46/2009-10/461, dt:1-2010 made by the Accountant General, Andhra Pradesh, Hyderabad vide Lr.No.LAR-1/1066/2010, dt:7-9-2010 on the misclassification and loss of Revenue for the document under enquiry and directed the District Registrar, Visakhapatnam in Memo.No.LAR-1/1066/2010, dt:23-11-2011 to collect the deficit amount under section 41-A of the Indian Stamp Act, 1899. The Inquiring Authority has further stated that as per the above, notices under section 41-A of the Indian Stamp Act, 1899 has been issued to the concerned parties of the document for recovery of deficit stamp duty.

6. The Inquiring Authority has further stated that as per Memo.No.FR1/IA/4946/94, dt:16-10-2010 of the Commissioner & Inspector General, Registration & Stamps, Andhra Pradesh, Hyderabad it was instructed that the Sub Registrar and staff shall scrutinize the documents presented before them for registration as to the correctness of the Market value of the property for levying stamp duty and thoroughly verify as to the recitals of the document presented for registration so as to arrive at the correct classification of the document. The deficit stamp duty on account of

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incorrect classification by the Sub Registrar detected during the Internal Audit shall be recovered from the parties concerned and invariably disciplinary action should be taken against the officer responsible for the loss all such cases. The Inquiring Authority has therefore stated that though notices for collection of loss of revenue were issued to the concerned parties, the Charged Officer by whose negligence, the pointed out loss occurred, cannot be absconded from facing disciplinary action. With the above findings, the Inquiring Authority has stated that the document under enquiry No.2026/2007 is classified as Conveyance on sale and the loss of Revenue to a tune of Rs.16,63,685/- is confirmed.

7. The Inquiring Authority has finally stated that on the basis of documentary and oral evidence adduced in the case before him and in view of the reasons given therein, he hold that the charge is proved.

8. And whereas the Inquiring Authority report has been communicated to the Charged Officer. The Charged Officer submitted representation while citing certain judgments of Hon'ble High Court / Supreme Court has mainly stated among others that the Doc.No.2026/2007 registered by him on 7-5-2007 at Registrar Officer, Visakhapatnam was audited by the Accountant General, Audit Staff in April, 2009 and pointed out the remarks of treating the document as Conveyance on Sale chargeable to Stamp duty under Article 47-A of Schedule I-A of the Indian Stamp Act, 1899 and the transfer duty thus alleging deficit amount of Rs.16,64,685/- for which the Joint Sub Registrar-I, Registrar Office, Visakhaptnam furnished a very detailed reply that the document was subject stamp duty under Article 6 (B) of the Schedule I-A and also under Article 62 (a) of Schedule I-A of Indian Stamp Act, 1899 apart from the Registration fee of Rs.87,500/-. The Charged Officer has further stated that the then District Registrar, Registration & Stamps, Visakhapatnam also sent a similar report to the Commissioner & Inspector General, Registration & Stamps and stated that the Commissioner & Inspector General, Registration & Stamps accepted the Accountant General's audit remarks and stated that consequently, the alleged deficit amount of Rs.16,63,685/- was finalised in the year, 2011 and the same was noted in the CARD system / Computers for realisation of the deficit from the parties. On which, the Charged Officer has stated that Presenting Officer was questioned about realisation of the alleged deficit amount, he could not produce any record to show that any steps were taken by the Department for collection of the alleged deficit amount under sections 41-A, 47-A and 48 of the Indian Stamp Act, till completed of the inquiry on 3-5-2014. He has finally requested the Government to set aside the Enquiry Report and to exonerate him from the charge framed against him.

9. The disciplinary proceedings has been initiated by the Disciplinary Authority i.e., Deputy Inspector General, Registration & Stamps, Vizianagaram, conducted regular enquiry in the matter, communicated the Inquiring Authority report to the Charged Officer, the Charged Officer submitted representation. Since the Accused Officer was retired from service, hence the Deputy Inspector General, Registration & Stamps, Vizianagaram has furnished the record for taking necessary action in the matter under Rule 9 of Andhra Pradesh Revised Pension Rules, 1980 in the reference 4th read above.

10. Government have examined the matter and observed that the loss caused by the Charged Officer Sri K.Bodenna, former Sub Registrar (Retired) in respect of Doc.No.2026/2007 of Registrar Office (Original Branch), Visakhapatnam for Rs.16,63,685/- has not yet recovered either from the parties or through the efforts of the department and since the charge held proved against the Charged Officer, therefore, it has been provisionally decided to impose a penalty of 15% cut in pension permanently besides recovery of loss of Rs.16,63,685/- against the Charged Officer Sri K.Bodenna, former Joint Sub Registrar (Retired). Accordingly, a Show Cause Notice has been issued in the reference 7th read above.

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11. Whereas in the reference 8th read above, the Charged Officer has submitted the representation stating the following:

(a) He has stated that Ashwini Dutt was one of the promoters and subsequently he was allotted 1,25,000 shares of Rs.10/- each in lieu of his 116th share in the land purchased by Dasapalla Estates Private Limited through possessory agreement .

(b) He has further stated that the Company has acquired the Corporate status and has become a juristic person and stated that no longer the promoters are holding their shares of land which were held by them at the time of initial acquisition as the whole assets of Company viz M/s. Dasapalla Estates Private Limited have become common property of all the share holders. He has further stated that no individual promoter has any right over the assets of the Company as the promoters initial investments were converted into equity shares and therefore stated that Ashwini Dutt cannot sell the property of Company but can sell his 1,25,000 shares. With the above, he has stated that the sale agreement is only in respect of 1,25,000 shares held by him and stated that as per Companies Act, a share holder is only entitled for a dividend as and when declared by the Company and share holder has no access to the Company's properties and he cannot sell Company's property. He has further stated that even if a person is authorized to sell the Company's properties, the sale proceeds will go to the Company but not to the individual.

c) He has further stated that in the event of winding up of Company, the properties of the Company are sold and the liabilities are discharged and stated that if there is any surplus amount, the share holder will get pro-rata to the extent of his holding.

d) i) He has further stated that on 07-05-2007, Sale Agreement was registered by him as No.2026 of 2007 and stated that the Internal Audit District Registrar did not make any remark. He has further stated that the District Registrar, during the course of Annual Inspection also did not make any remark and stated that as per G.O.Rt.No.1475, Revenue (Registration-I) Department, dt:31-07-2006, for Agreement of sale, the stamp duty chargeable was Rs.20,000/- maximum and fixed registration fee of Rs.1000/- was leviable. He has further stated that the party paid Rs. 20,000/- and Rs.1000/- towards stamp duty and registration fee respectively and stated that he remitted Rs.21,000/- promptly in the Treasury Department.

ii) He has further stated that the Vendor had given away his share certificate to the purchaser but not structures mentioned in the schedule therein and stated that Ashwini Dutt was not competent and also not authorized to sell the property of the Company viz M/s Dasapalla Estates Private Limited which had acquired possessory rights only through Sale Agreement cum GPA vide Doct.No. 218 of 2004 but not right of transfer.

iii) He has further stated that sale agreements without possession of movable properties are chargeable to stamp duty of Rs.100/- only as per 6 (a) of Schedule- I-A to the Indian Stamp Act, 1899 and thus stated that excess stamp duty of Rs.19,900/- was collected.

e) He has further stated that Sale Agreement is in respect of 1,25,000 shares of Rs. 10/- face value bearing distinctive Nos. 01424401 to 01549400 bearing share certificate No. 034 and Folio No.130 of M/s. Dasapalla Estates Pvt., Ltd., only at a premium of Rs. 140/-. He has further stated that thus the total consideration was Rs.1,75,00,000/- for 1,25,000 equity shares sold by Chalasani Ashwani Dutt .

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f) He has further stated that the A.G. Audit treated the Sale Agreement as Conveyance on sale, and remarked that Stamp duty was chargeable @ 7%, Transfer duty @ 5% and Registration fee @ 1/2% even though Sale Agreement falls under Article 6 (a) of Schedule —Inquiring Authority to Indian Stamp Act .

g) He has further stated that during the Internal Audit (Cent percent) conducted by the Audit District Registrar, Visakhapatnam, no irregularity was pointed out and during Annual Inspection conducted by the District Registrar in 2008 also, no irregularity was pointed out, which reveal the view point of the department.

h) i) He has further stated that as per the Companies Act , no share holder is entitled to property rights of the Company to the extent of shares held by him / her and stated that hence, total deficit of Rs.16,63,685/- pointed out by A.G. Audit is therefore unfounded.

ii) He has further stated that the Joint Sub Registrar-I, Visakhapatnam submitted a reply in 2010 informing that deficit stamp duty of Rs. 43,750/- and deficit registration fee of Rs.87,500/- totaling Rs.1,31,250/- was caused to the exchequer .

j) i) He has further stated that the District Registrar, Visakhapatnam on 12-02-2010 submitted a reply to the Commissioner & Inspector General of Registration & Stamps that Sale Agreement attracted stamp duty as per Article 62 (a) of Schedule – 1 to the Indian Stamp Act and opined that deficit stamp duty of Rs. 43,750/- and deficit registration fee of Rs.87,500/- totaling Rs.1,31,250/- was caused to the state exchequer in respect of the document under reference .

ii) He has further stated that if the shares are sold absolutely, the above opinion is correct and stated that as seen from the document No. 2026 of 2007, it is only a Sale Agreement. Therefore, he has stated that the opinion that loss of Rs. 1,31,250/- was caused to the exchequer is not correct .

iii) He has further stated that subsequent transactions clearly establish that Aswini Dutt is a continuing partner in M/s Dasapalla Estates Private Limited and stated that as such, Document No.2026 of 2007 is only an Agreement of Sale of shares i.e. movable property registerable in Book-4. He has further stated that mere mentioning of schedule of property in the Sale Agreement does not create any rights over the property in favour of the agreement holder.

k) i) He has further stated that the Commissioner & Inspector General in Memo No. IA/4774/2016, dt:10-06-2010 categorically informed as under ".....and the loss so determined u/s. 41-A of Indian Stamp Act can be recovered only from the parties liable to pay stamp duty" and stated that hence the loss of revenue need to be collected from the parties and the sum noted against him has to be dropped.

ii) He has further stated that the Commissioner & Inspector General on 23-11-2011 directed the District Registrar, Visakhapatnam to collect deficit stamp duty of Rs. 16,63,685/- from the party u/s. 41-A of Indian Stamp Act, 1899 .

l) i) He has further stated that the District Registrar, Visakhapatnam issued statutory notice i.e., Proceedings No.G2/101/2011 to the claimant for payment of stamp duty of Rs.16,63,685/- on 08-09-2011.

ii) He has further stated that the Deputy Inspector General, Registration & Stamps informed the Commissioner & Inspector General that the Deficit Amount of Rs.16,63,685/- was made in the index relating to the property in E.C. module and also District Registrar was addressed to recover the sum from the parties under coercive process.

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m) He has further stated that the Commissioner & Inspector General, Registration & Stamps in Memo.No. S4/21148/87, dt:09-10-1987 instructed that in cases where classification is not correctly done in good faith, the registering officer need not be punished and the loss so determined can be recovered under Section 41-A of Indian Stamp Act only from parties liable to pay stamp duty and the Sub Registrar's action may be viewed leniently.

n) He has further stated that Section 29 of Stamp Act clearly stipulates from whom the deficit stamp duty is to be collected.

o) He has further stated that the findings of the Regular Inquiry Officer are not correct and stated that the Commissioner & Inspector General, Registration & Stamps memo No. MV2/3957/2006, dt:17-04-2009 reads as under "hence if such documents were already referred u/s. 47-A or finalized under 41-A action will be taken in those cases for collection of actual deficit amount and it is highly unjust and irregular to include the loss projected by the internal Audit Sub Registrar……."

p) He has further stated that Supreme Court in SLP (c) 13917 of 2009 dt: 11-10-2011 held as under " Hence the document under reference is only a sale agreement without possession do not convey title and do not amount to transfer".

q) He has further stated that the observation / finding of the Inquiring Authority that it was not mentioned in the Agreement that " the vendor (Sri Dutt) would execute any other document (such as a Sale Deed) at a later date to effect transfer of the property by another registered documents and stated as such the present Agreement itself as serving his purpose of "Conveyance of Schedule Property" in favour of the agreement holder is unfounded and not supported by any provision in the Indian Stamp Act and stated that the fact that in future sale deed will be registered pursuant to the present sale agreement was not mentioned does not make the sale agreement a regular sale deed.

r) He has further stated that the presumption of the Inquiring authority that it is serving the purpose of conveyance of schedule property is nothing but figment of his imagination and incorrect as no such condition precedent is found in Registration Act, 1908 and he reiterated that there is no provision in the stamp act to collect the deficit stamp duty if any from the registering officer.

s) He has further stated that possession of site together with structures was not given but only share certificate was given.

t) He has further stated that notice u/s. 41-A of Indian Stamp Act, 1899 was also issued to Aswini Dutt, executant of Sale Agreement under reference, who is a rich, noted Cine Producer but the presumptive loss was not realized perhaps due to half- hearted approach of the District Registrar, Visakhapatnam and stated that contra entry was made against the Sale Agreement in Encumbrance Data, u/s 48 of Indian Stamp Act, thereby permanent charge is created on the property. With the above, he has stated that the so called classification error is neither intentional nor fraudulent, therefore, he has requested the Government to drop the charge in the interest of justice.

12. Government after careful examination of the matter has decided to confirm the provisional decision i.e., to impose a penalty of 15% cut in pension permanently besides recovery of loss of Rs.16,63,685/- against the Charged Officer Sri K.Bodenna, former Sub Registrar (Retired) and sought for concurrence of Andhra Pradesh Public Service Commission in the reference 9th read above.

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13. The Andhra Pradesh Public Service Commission have agreed with the proposal of the Government in the reference 10th read above (copy enclosed).

14. Therefore, Government, hereby order to impose a penalty of 15% cut in pension permanently besides recovery of loss of Rs.16,63,685/- against the Charged Officer Sri K.Bodenna, former Sub Registrar (Retired).

15. The Director & Inspector General (Registration & Stamps), Vijayawada / Deputy Inspector General, Registration & Stamps, Vizianagaram shall take necessary action in the matter accordingly.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

Dr.D.SAMBASIVA RAO
SPECIAL CHIEF SECRETARY TO GOVERNMENT (CT, EXCISE, R&S)

To
The Individual (**through** the Deputy Inspector General, Registration & Stamps, Vizianagaram with a request to serve the order on the Charged Officer and furnish the served copy along with dated acknowledgement to Government for record).
The Director & Inspector General, Registration & Stamps, Andhra Pradesh, Eedupugallu, Vijayawada, Krishna District,.
The Deputy Inspector General, Registration & Stamps, Vizianagaram.
Copy to:
The Secretary, Andhra Pradesh Public Service Commission, Hyderabad.
SF / SC.

//FORWARDED:: BY ORDER//

SECTION OFFICER